

By E. Pouper

K-ENGLAND. - PARLIAMENT. - HOUSE OF LORDS. - PROCEEDINGS.

SPEECH

IN THE

HOUSE of LORDS,

UPON THE

Third Reading of the BILL for inflicting

PAINS and PENALTIES

UPON

FRANCIS

LATE

Lord Bishop of ROCHESTER.

— Quo ruitis vel quæ dementia, dixi,
Concitat, O Socii! — Ovid.

The Fourth EDITION.

LONDON:

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SPENCER

HOUSE OF LORDS

Third Reading of the Bill for inflicting

PLAINS and PENALTIES

MOYU

BRITISH PATENT OFFICE



ETAJ

Lord Bishop of Rochester.

Corinth. 13. Sec. 1. ————
Ovid. ————

The Fourth Edition.

W O D N O L

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A great deal has been said, and many too much cannot be said, to show that this Bill is an infringement upon the Authority of the House.

SPEECH

IN THE

HOUSE OF LORDS, &c.

But, my Lords, if it could be supposed that this Bill did not affect your Lordships Authority, yet it affects the Honour of the Crown, I am sure it will excite a becoming indignation in us all against it.

My Lords,
THIS Debate has been already carried to that Length, and is by all agreed to be of such Importance, that I am sure your Lordships will permit me to enter into it without any Apology.

I am, my Lords, against this Bill, not only because I think nothing has been offered sufficient for the Support of it, but because I think the Honour and Dignity of the Crown, the Dignity and Authority of this House, and the Credit and Reputation of the House of Commons, concerned in the Event of it.

My Lords, The Proceedings of that House have been, in this Case, very remarkable and uncommon: They voted the Bishop guilty of High-Treason the very first Thing they did; and it was reasonable to expect, that the Consequence of that Vote would have been an Order for an Impeachment in Parliament, or a Prosecution in the ordinary Course of Law.

But, my Lords, we see they have taken another Method, and that without weighing what the Consequences might be. They have taken a Method, whereby they have made themselves both Judges and Accusers.

They could not, as Judges, decently proceed against the Bishop, without hearing him, and therefore they gave him a Day for that Purpose; and thereby they discover'd the Dilemma into which they had run themselves.

They found themselves oblig'd to hear him, and yet they could not acquit him, because they had already prejudg'd him.

It is not therefore to be wonder'd that they have pass'd this Bill; though, I believe, they would be very well pleas'd your Lordships should reject it, that the Knowledge of their having taken so wrong a Step, might the sooner be forgotten.

My Lords,

A great deal has been said, and surely too much cannot be said, to shew that this Bill is an Infringment upon the Authority of this House.

It becomes your Lordships to support your Dignity, and to shew a suitable Repentment, when the least of your Privileges is invaded.

Your Lordships, upon this Occasion, would do well to follow the Example even of this very House of Commons: How contemptuously did they throw out a Bill lately sent them, because they thought it look'd like a Money-Bill? And will your Lordships suffer them to share your Authority, to become Judges equal with your selves, when there is no Necessity for it?

In this Case, it is manifest, there can be no Necessity, because the Bishop is amenable to Justice: He has been confined several Months; he is now strictly guarded; and, no doubt, the Zeal of the Governour will prevent his Running away.

But, my Lords, if it could be suppos'd that this Bill did not affect your Lordships Authority; yet if it affects the Honour of the Crown, I am sure it will raise a becoming Indignation in us All against it.

This Bill, if your Lordships pass it, will put his Majesty under the unavoidable Necessity of refusing the Royal Assent to it, or of condemning one of his Subjects, a Lord of Parliament, and a Bishop of that Church of which his Majesty is Guardian and Protector, in a Case at least doubtful; and that without hearing one Word either of the Charge, or of the Defence.

My Lords, It hath been often said, (I wish it were said without Grounds) that we have a disaffected Party amongst us. I am persuaded, it is far from the Intention of any Lord here, to advise his Majesty to do any thing that might possibly increase that Disaffection: But whether the passing of such a Bill against a Bishop of the Church of England, unheard, may not give a Handle to the Clamorous, to raise an Odium against his Majesty's Administration, is submitted to your Lordships.

His Majesty's great Clemency and Mercy are known to all the World, and he has been in nothing more conspicuous, than in the Exercise of those Royal Virtues: Supposing, then, your Lordships should pass this Bill, how can you ever hope for the Royal Assent to it?

These Objections that concern the King, appear to me unanswerable, not only with Regard to this Bill, but to all Bills of Attainder in general. I think they ought never to be allowed, but when the Offender flies from Justice, or is in open Rebellion; and then, perhaps, the Notoriety of the Fact may be some Excuse for the Extraordinariness of the Proceeding.

My Lords,

I expected to have heard from that Reverend Bench many Arguments of another kind against this Bill, which are properly within their Sphere, and which I am sure they are perfect Masters of.

The Old Champions of our Church used to argue very learnedly, that to make or to degrade Bishops was not the Business of the State; that there is a Spiritual Relation between a Bishop and his Flock, derived from the Church, with which the State has nothing to do: But this Bill deprives the Bishop of that Spiritual Relation, without the Concurrence of the Church. The Parliament alone does it; and it must be owned, that if the Parliament can do it, they can as well make a new one in his room; and a Clause for that Purpose added to this Bill, would as effectually do the one as the other.

What the Thoughts of our Reverend Prelates are upon these Points, does not yet fully appear; something of their Conduct intimates, as if our old Divines were mistaken: But, be that as it will, as the Judgment of our Prelates will carry great Weight, and as the Reasons for such their Judgment must needs be convincing, I do not doubt but they will give your Lordships full Satisfaction before this Debate comes to a Period.

In the mean time, I speak my Concern, that if Acts of Parliament are made to interfere with Church-Affairs; if Bishops are to be put in or turned out at Pleasure; and all this to be done without the Concurrence of the Church, the World abroad may, though unjustly, look upon our Church as a Creature only of the State, and treat our Bishops, as if they were no more than State-Officers.

I hope, however, from the Courage, Zeal, and Conduct of our present Reverend Prelates, whatsoever becomes of this Bill, that they will be able to wipe off any such Scandal: They certainly have the Honour, the Dignity, and Authority of our Church always at Heart; and every thing tending to her Interest, they will most zealously promote. But whether the passing of this Bill will promote her Interest, or be of any Service to her, they best know: For my part, I cannot even guess at any Advantage She possibly can receive by it, unless it be this, That it will make the Bishoprick of Rochester, and the Deanery of Westminster to become vacant.

My Lords,

This Bill carries in the Frame of it an invincible Objection to it; for the Preamble and the enacting Part, the Crime and the Punishment, bear no Proportion to each other.

The Preamble contains a Charge of High-Treason against the Bishop; and pray, my Lords, why should he not be punished accordingly?

Is it because he is a Bishop of the Church of England, or a Lord of Parliament, or in high Favour with the King or his Ministers? I have not heard that the Bishop hath been at Court of late; but be it either of these, it would be so far from being a Reason for mitigating his Punishment, that it ought, if possible, to increase it.

My Lords, Our Laws have wisely taught us to have a just Abhorrence of High-Treason, and have ordained for it the severest Punishment that English Clemency will admit of; and shall he, who has been voted the principal Contriver and Director of this most horrid and detestable Treason, escape with a Punishment less than his Crime deserves, and that too in full Parliament?

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Methinks,

Methinks, if it were necessary that the Legislature should interpose in this Case, the Heinousness of the Offence should fire their Resentment; and instead of abating the Punishment, should put them upon heightening it with all the Circumstances of Severity that their Wisdom could contrive.

As in the Case of the late *South-Sea* Directors: No one will say, but that they might have been punish'd as Cheats, without the Help of an Act of Parliament; but as the Punishment ordained by our Laws for such Offence came not up to the aggravating Circumstances of their Guilt, a Law was made to punish them on purpose; and they were very justly stripp'd of their Estates, who had before so notoriously cheated, bubbled, and beggar'd the whole Nation.

What Reason, then, can be given why the Bishop should not be punished, at least equal with others, in Cases of High-Treason?

Why, truly, the want of legal Evidence, is the only Reason pretended: A Reason! in my Apprehension, so very mean and trifling, that it ought not to have been heard in the supreme Judicature of a Nation, without the severest Censure, and such as would well become your Lordships to treat with the utmost Indignation and Contempt.

For, my Lords, Is it come to this at last, that after so much Grimace, so much Noise and Stir, after committing the Bishop for High-Treason, after voting him a Traytor, and treating him as such, must it at length come out, that there is no legal Evidence against him!

To palliate the Matter a little, a Distinction is endeavour'd to be made between legal Evidence and real Evidence, or between such Evidence as our Law requires, and such as in natural Justice and Equity ought to be admitted.

But, my Lords, this is a Distinction entirely without a Difference; for what is Evidence of a Fact before any Judicature whatsoever, but such Testimony as the Nature of the Case requires, to induce a moral Certainty of the Truth of the Thing testify'd: The greater or less Consequence the Case is of, the more or less Proof is required to induce such Certainty.

Thus, in ordinary Matters, barely to prove a Hand-writing is held sufficient Evidence; because, in such Cases, it is not to be supposed the Hand-writing should be counterfeited: In other Cases, seeing the Party write, is necessary to be proved; and still as the Weight of the Case increases, stronger Proof is required.

Ever since the Reversal of the Attainder of Colonel *Algernon Sidney*, the proving of Treason by the proving of Hand-writings, hath been, with great Justice, condemned; and, why, I pray? but because there can be no Hand-writing but what will admit of a Counterfeit; and nothing that is capable of being counterfeited, carries with it such a Degree of Certainty, as is necessary where a Man's Life and Fortune is concern'd.

My Lords, Legal Evidence is nothing else but such real and certain Proof, as ought, in natural Justice and Equity, to be receiv'd; and therefore the Oath of one credible Witness being certain and sufficient to induce a Belief of the Thing he swears, is legal Evidence; and yet so tender is our Law, so great a Degree of Certainty doth it require, that, as it now stands, Two positive Witnesses are required to convict a Man of High-Treason.

This,

This, however, hath been preposterously enough urg'd, to shew a Difference between legal and real Evidence; and Sir John Fawcett's Case hath been cited for the same Purpose.

But this, with Submission, shews no Difference at all; for will any one say, that one credible Witness is not legal Evidence? Can any Court in the Kingdom, upon a Tryal of High-Treason, refuse to hear such Evidence? And is not such Evidence sufficient too in all Cases, where some positive Law, for the greater Certainty, doth not require more?

One of the learned Gentlemen at the Bar, (I suppose, out of pure Zeal for this Bill, and not with a Design to misguide his Audience) did roundly affirm before your Lordships, that no Evidence, strictly speaking, was legal, but what was Mathematical.

I am confident, that Gentleman would not have given this as his Opinion under his Hand at his Chamber, because he knows it is directly contrary to Truth: He knows very well, that no Offender, that puts himself upon his Tryal, can be convicted, but upon the Oath of one or more Witnesses; he dare not deny, but that such Conviction is founded upon legal Evidence, strictly so speaking; and no one will pretend to say, that any Evidence of Witnesses can be called Mathematical.

But the Gentleman goes on, and says, That the Evidence for this Bill is legal, in the general Sense of the Word: On the contrary, I beg Leave to affirm, that it is not legal in any Sense whatsoever. No Act of Parliament hath made it legal, nor can it, in natural Justice and Equity, be called so, for want of sufficient Certainty; and, indeed, it hath been admitted throughout this Debate, and even by the Counsel who spoke first for this Bill, That it is not supported by legal Evidence.

But this Gentleman was pleased to go still further; for he affirmed before your Lordships, that Depositions taken in Writing, were not Evidence in any Court of Law.

My Lords, it is pity that in so fine a Speech, there should be so much false Doctrine: It is very true, that the Law doth require the best Evidence that the Nature of the Case will admit of; and therefore will not suffer the Depositions of a Witness in Writing to be read, where such Witness can be examined *in voce*: But that Gentleman could not but know, that where such living Witness is not to be had, his Depositions in Writing are never refused, nor any other Evidence that, in natural Justice and Equity, can tend to discover the Truth of the Fact in question with Certainty.

My Lords, The Wisdom and Goodness of our Law appear in nothing more remarkably, than in the Perspicuity, Certainty, and Clearness of the Evidence it requires to fix a Crime upon any Man, whereby his Life, his Liberty, or his Property may be concern'd: Herein we glory and pride our selves, and are justly the Envy of all our neighbour Nations.

Our Law, in such Cases, requires Evidence so clear and convincing, that every Person, the Instant he hears it, must be fully satisfied of the Truth of it: It admits of no Surmises, Imputations, forced Consequences, or harsh Constructions, nor any thing else to be offer'd as Evidence, but what is real and substantial, according to the Rules of natural Justice and Equity.

These are the Rules the Judges go by, nor have they any other in determining what is, or what is not to be admitted as Evidence before them; and therefore to say, that the Law refuses such Evidence as is real, and ought in natural Justice and Equity to be admitted, is to cast an Imputation upon the Law; which is not only unjust, but entirely groundless.

My Lords, I think sufficient hath been said, to shew the Mistake of those Noble Lords who have endeavour'd to distinguish between legal and real Evidence. The Distinctions that have been made, and the Instances that have been produced, shew only what legal Evidence is sufficient for Conviction, and what not; and if that were the Question now before your Lordships, it would deserve another Consideration.

The present Question is, whether any Evidence at all has been offered to your Lordships to fix Treason upon the Bishop of Rochester; and for my part, my Lords, I am clearly of Opinion, that you have had no such Evidence: It is on all hands agreed, that no legal Evidence of Treason has been offer'd against him; and I hope I have sufficiently satisfy'd your Lordships, that if it be not legal Evidence, it is not real Evidence, or such as in natural Justice and Equity ought to be admitted, and consequently no Evidence at all.

My Lords, The Counsel for the Bill have not attempted to prove positively against the Bishop any one single criminal Act: The Circumstances that they have offer'd, are, in my Opinion, so far from affecting him, that they carry in them no Appearance of Guilt in him whatsoever.

If indeed there had been any one positive Witness against him, your Lordships, perhaps, (as was done in Sir John Fenwick's Case) might, with some Appearance of Reason, have admitted Circumstances in Support of such Witness, rather than a Man of the Bishop's Rank and Character should go unpunish'd; and, indeed, I think no Man's Cunning ought to be a Protection for his Villany; and I hope, and do not doubt, but all Traytors will, one time or other, meet with their just Rewards.

But, my Lords, in the Case before you, the whole Charge is built upon Circumstances, and these are said to be supported by other Circumstances; but all of them are so remote, so general, and, I may say, so inoffensive, that they might suit any Lord here, as well as the Bishop; for there is not one single Circumstance of them all, such as in its Nature would be admitted as Evidence of any Crime against any Man in any Court in the Kingdom.

To come, my Lords, to Particulars.

The Treason charged upon the Bishop is, That he dictated Kelly to write the Three Letters dated the 20th of April 1722, signed Jones, Willington, and M.B. And in Maintenance of this Charge, 'tis said, that these Three Letters were of the same Hand-writing with another Letter produced before your Lordships, and dated the 20th of August following. That from the 20th of April to the 20th of August, Letters were continually sent abroad in the same Hand-writing; that these Letters contained a treasonable Correspondence; that they are the Hand-writing of Kelly; that Kelly had been with the Bishop two or three times within these two or three Years past; that these are Circumstances in the Case of Jones in this Correspondence, that suit with the Case of Willington and M.B. in the Case of both that suit with the Bishop.

My Lords, These are the Facts that are the main Foundation upon which the Bishop's heavy Charge is built; and surely it well behoves your Lordships to consider seriously

seriously how they are proved, and in what Manner and with what Degree of Certainty they are proved.

The three Letters taken simply carry no Treason in them; they have not yet been deciphered into Treason, and were it not for a Name in the Direction of one of them, which is said to be a Cant Name of the Pretender's, they probably might have passed as harmless and undesigning Letters; will your Lordships therefore suppose that the Writer directed his Letter to the Pretender by the Cant Name of *Jackson*, when yet it does not appear that he ever knew the Pretender had such a Cant Name? Ought we not rather to suppose in favour of Innocence that the Letter was not intended for the Pretender, but for one whose real Name it bears?

My Lords, These Cant Names and the Art of the Decipherers have been the Means made use of to make this Correspondence treasonable; but will it not be thought hard that a Man must be conjured into Treason by a Magick Art that none of us understand, and by a Parcel of Names that the wisest of us are not yet able to discover whether they were designed for Cant Names or for real ones?

To make the Matter clearer the Clerks of the Post-Office are called, and they prove that the several Letters produced before your Lordships are true Copies of original Letters, sent abroad as directed; which Originals, according to the best of their Judgment and Belief, are the same Hand-writing with the Letter of the 20th of *August* abovementioned. This Judgment and Belief of theirs is founded without comparing any two of these Originals together, or without pretending to say whose Hand-writing they are, or to whom they belong.

My Lords, I have already observed that the proving of a Hand-writing is at best but Evidence too precarious and uncertain to make good a Charge of so weighty a nature as this in Judgment before you; but I cannot help taking notice, that the Proof of these Letters, so as to make them treasonable, is still more precarious, more uncertain and slippery, than any thing of the Kind I ever met with.

The usual way to prove a Hand-writing, so as to fix a Charge upon the Writer, is, for the Witness to swear that he hath frequently seen the Party write, or that he hath corresponded with him, and received several Letters from him, and therefore is very well acquainted with his usual Character and way of writing; and then the Writing itself is produced, the Witness swears to it, and the Import of it is discovered by every By-stander. But here these Post-Office Clerks are forced to call in Aid, a Messenger and a Servant, to fix the Hand-writing of the Letters they produce; the Letters themselves are unintelligible, and therefore the Assistance of the Decipherers, and some Cant Names must be added, before they can wire-draw Treason out of them.

My Lords, These Decipherers refuse to give your Lordships any Reason for the Construction they have made; they shelter themselves by saying, that to give you a Reason, would be to discover their Art; happy Art indeed! That shall enable the Artist to swear a Man into High-Treason, and yet it shall not be in the Power of the accused Person to disprove him.

I do not find that these Gentlemen pretend to act by unerring Rules; they themselves own they may be mistaken; and therefore until your Lordships are let further into their Secret, you will judiciously look upon the Art of deciphering to be no more than the Art of guessing, and esteem him that guesses best, to be the best Decipherer.

The

The Messenger and Servant that have been called to find the Evidence of this Hand-writing, and to fix it upon Kelly, are far from giving your Lordships such an Account of it, as can induce you to believe they are sufficiently acquainted with it; they do not pretend to say that they have been frequently accustomed to see or observe him write, or that they ever received any Letters from him, or ever were privy to any of his Correspondencies; these Things, one would have thought, might easily have been proved against a Man of Kelly's great Dealing and Acquaintance, in as full and clear a manner as the Nature of the Thing would admit of.

Your Lordships then are pleased to observe, that the Evidence offered to prove this Hand-writing, so as to make it criminal, consists of three distinct Branches, supported by three different Sets of Witnesses; and that each of these three several Sets have given a very lame, doubtful and obscure Evidence; but if their Evidence had been ever so full and positive, yet I must beg Leave to insist, that it is such as is in its Nature dubious and uncertain, and therefore in a Case of this Consequence ought not to be relied on.

This will appear still the plainer from the different Opinions observable among the different Witnesses, inasmuch that I may well venture to say your Lordships are as yet at a loss by whom these Letters were wrote; but if you will have any regard to Numbers, and to the Nature and Circumstances of the Testimony given by those Numbers; the Evidence is much stronger, and more clear and convincing, that they were not wrote by Kelly, than that they were; and if they were not wrote by him, it will become your Lordships to consider carefully what you are a doing; for then the Foundation of this Bill will be sapp'd, and of course the whole Fabrick must fall to the Ground.

But, my Lords, supposing these Letters were really the Hand-writing of Kelly, that they were of that treasonable Signification that the Decipherers contend for, and that the Names mentioned in them did not belong to real Persons, but were Cant Names, to denote the Pretender and his Agents; I say, my Lords, supposing all this true of Kelly, how will it affect the Bishop? Might not Kelly write these Letters, and carry on this Correspondence without the Bishop's Direction? Must the Bishop answer for Kelly's Crimes, because Kelly happens to be a Nonjuror? Or because he was employ'd to buy Gloves and Stockings for the Bishop, must your Lordships therefore infer that he was employed to write Treason for him? Suppose Kelly had actually liv'd in the Bishop's Family as his Secretary; have we not seen, not many Years since, even a Jesuit a Bishop's Domestick without Offence?

Give me leave, my Lords, to carry this Point a little further: Has any thing been offered to induce your Lordships to believe that Kelly saw the Bishop, or heard from him for several Months before this Correspondence began? Has any one Word been said, or Hint given, either from Cant Names or decipher'd Letters, or any otherwise howsoever tending to that Purpose? Nay, my Lords, have you not had as much Evidence as the Nature of the Thing is capable of, that the Bishop could not dictate nor Kelly write those Letters at any time near the Time of their Date? And if they were dictated by the Bishop, it must be about that Time, because the Circumstances mentioned in the Letters would not suit him at any other Time.

And here, my Lords, it is proper to observe, that the Managers for the Bill, when they were to apply the Circumstances of Jones and Kingston in the Letters to the Bishop's Case, they built the whole of their Arguments upon the Date of those Letters; but when they saw that the Bishop had fully proved that it was impossible he could dictate them at that time, why then truly they vary their Charge, and say, that it was not his dictating the Letters at that time, but his

his dictating the Letters of that Date that they contended for; and they tax the Bishop with a partial and fallacious Defence, for applying it to the Time, and not to the Fact.

But, my Lords, I think, with great Submission, that the Bishop has made a very just Defence, I think he could not have made a better; and under the Disadvantage of proving a Negative, I think it was almost impossible he should have made one so good.

For your Lordships well remember, he was charg'd as the Author of the Letters signed *Jones*, and *Illington*, because he was under the Circumstances of *Jones* and *Illington* at the Time of the Date of those Letters: But the Bishop hath fully proved, that he could not be the Author of them at that time; and if he were not at that time, he could not be so at any other time; for take away the Date of those Letters; and the Relation between *Jones* and *Illington*, and the Bishop you must of course take away likewise.

But then, as your Lordships are as yet at a loss when or by whom these Letters were either dictated or wrote, shall the Tallying of a few Circumstances in them with the Bishop's Case, supposing them to be wrote about the time of their Date, make him guilty of High-Treason; especially when his Counsel have shewed us, from the Letters themselves, as many Instances wherein they differ'd? Must Mrs. *Jones* and the Bishop's Lady signify the same Person, because they died about the same time? Or must Mrs. *Jones* and Mrs. *Illington* signify the same Person, because by a Letter wrote, no one knows by whom, or when; Mention is made of the Death of one Mrs. *Jones*, and another Letter condole the Death of one Mrs. *Illington*? Or is the Bishop guilty of High-Treason, because he is supposed to be meant by *Jones* and *Illington*; when yet, through the whole Correspondence, there is no Treason committed either by *Jones* or *Illington*?

But admitting that all the Circumstances that have been produced against the Bishop, hit him so exactly, that it was morally impossible they could mean any Body else; yet still, my Lords, what has the Bishop to do with it? Might he not be thus describ'd, and thus spoke of, and yet know nothing at all of the Matter? And if he is thus to suffer for what another Man may have said of him, I am sure he is the first, and I hope he will be the last that ever will be distinguish'd in so extraordinary a Manner.

The Sum then of all the Circumstances that have been offer'd as Evidence against the Bishop, amounts to this: Here have been a Parcel of Cant Names produced and made use of against him, which, for ought appears, he never heard of. There have been Letters produced and read against him wrote in Cyphers, and of a Hand-writing not pretended to be the Bishop's, and of which your Lordships have as yet had no manner of Certainty. A Construction hath been put upon these Letters, which, in several Circumstances, hit the Bishop, and in several others, miss him: But amongst all these Circumstances, there is not the least Hint of any Word said, nor Act done by him, relating to this Conspiracy, from first to last; nor doth it appear, that he was ever privy to it, or so much as heard of it, till it was known to all the World.

And yet, my Lords, these, and such as these, are the Circumstances whereby the Bishop is to be guess'd into High-Treason; but I hope your Lordships will be every cautious how you make Precedents of such wretched Guess-work. The celebrated Letter to *Dubois* now before you, is a notable Proof of the Necessity of such Caution; for we see the grand Promoters of this Bill, cannot agree in their Construction, or they have at least changed their Opinions about that famous Letter.

The Uncertainty of this Way of Guessing, puts me in mind of some remarkable Circumstances relating to the renowned Mr. *Neynoe*, which I had like to have forgotten, and which, though they seem to be under the Misfortune of being slighted here, do yet in the Report of the Committee of the House of Commons, make a very considerable Figure.

Those Circumstances of *Neynoe* in that Report, appear to be not only the Foundation of the Charge against *Kelly* and the Bishop, but even the Foundation of the Plot itself; and the Art and Management with which they are there dressed up, do well deserve your Lordships Attention.

It seems, my Lords, this worthy Man had been examined four several Times; his Examinations were taken in Writing, and contained an historical Account of the carrying on of this Conspiracy. The learned Committee, at the same time that they would represent him as a vile and infamous Fellow, and would be thought to look upon his Examinations as insufficient, do yet open their Scene with this very Account, and build entirely upon it.

But would any one believe that *Neynoe* was never sworn to, or so much as signed any one of these Examinations? Can any Body think that he was not required to do one or both? Does not every Body know, that they would otherwise be of no use? May we not therefore reasonably suppose, that he refused to do either the one or the other? And can any Reason be given for such Refusal, but that they were not true?

My Lords, the Committee were well aware, that great Objections would be made to this kind of Evidence; and therefore they have added to it some circumstantial Hearsays, which they call the corroborating and concurrent Proofs of *Neynoe's* Testimony. But pray, my Lords, what are these corroborating and concurrent Proofs? Why they are of this kind, one Man heard another Man say, that a third Man was concern'd in this Conspiracy.

Behold then the Sum of the Argument: *Neynoe's* Examination is admitted; it is felt to signify nothing; the same likewise cannot be denied of *Pancier's* Hearsay: But, however, both these Nothings make up something to prove the Plot, because they are the corroborating and concurrent Proofs of each other.

And thus the learned Committee have so contrived it, that they have made these Examinations of *Neynoe* to be of more Use, and to serve their Purpose better, than if *Neynoe* himself had been now living, and produced before your Lordships; and therefore it looks as if it were prophetically known, that the Man intended to hurt himself out of the World with a Winding-Sheet.

But however that be, it is Matter of Surprise, that these Examinations, which the Committee treated so respectfully, should now by the Council be so slighted, that they have scarce mention'd them, but as if they were ashamed of them; and yet they are as good Evidence as any that have been offer'd in favour of the Bill now before your Lordships.

But, my Lords, in the Course of this Debate, it hath been warmly urged, that though there be not legal Evidence against the Bishop, yet that all the Circumstances that have been offer'd against him are sufficient to convince any Man in his private Judgment that the Bishop is guilty. Nay, it hath been said, that these Circumstances put together, are stronger and more convincing, than any positive Evidence whatsoever; and therefore that no one can doubt of the Bishop's Guilt, though some, out of Compassion or good Nature, might be induced to vote in his Favour.

How

Howling and bawling on either hand, and trifling these Circumstances, which I have already observed to your Lordships, and I must say, it was not without good cause of Complaint; that I heard that it was the Result of Judgment, which could have been made in other Opinions only, and that no Purpose would have been served by it, and for once appears, may have been worse before. But my Lords, this is not the first Instance wherein I have observed Judgment and Opinion to be confounded and mislaid the one for the other; and that too in a very great and dangerous manner; and yet the Writer, and even the Speaker, never seem by any one besides the Writer, to have been aware of it. I have indeed too often observed doubtful Actions, by the Help of My Lords, Mens Opinions, generally speaking, are nothing else but their Fancies or Imaginations, and are usually grounded upon personal Pique, or Party-Prejudice. These are weak and slender Foundations, and have nothing to do, and I hope in England never will have any thing to do, where a Man's Life, his Liberty, or his Property is concerned. The Use that is made of the Bishop's Letter taken from the Help of But, my Lords, a Man forms his Judgment according to the Evidence that is offer'd him; That alone is his Rule; and as the Bishop's Letter is full of Uncertainty of That appears, Justice requires a Determination accordingly.

The Compliment therefore upon the Noble Lords that have appear'd against this Bill (if it was intended as a Compliment) carries a very severe Sting in the Tail of it, and supposes those Noble Lords to be possibly capable of giving an unjust Judgment. real Evidence, real Justice, and such as in natural Justice and Equity ought to have been ad-

My Lords, the Earl of *Strafford* lost his Head for accumulative Treason. A great many Facts were laid to his Charge, and though it was agreed on all hands, that not one of them singly amounted to Treason, yet it was insisted on, that all of them put together, shew'd an Intention in him to subvert the Government, and therefore that he was a Traytor. But if it had, there were never any; but it is that Bill, that will take away his Testimony in any Court in the

The Torrent of those Times taught Men to argue that though the Charge against the Earl did not contain legal Treason, yet it was morally impossible that he could commit the Crimes contained in that Charge, and not intend the Destruction of the State; that the Facts by him done, shew'd him more a Traytor than any positive Act of Treason could do; and that if Men were satisfy'd in their private Opinions that the Earl was in the main guilty of Treason, he ought to suffer accordingly.

My Lords, this was the Reasoning of those Days; a Reasoning! which I hope your Lordships will neither imitate nor encourage, because it was the Foundation of those Proceedings against that great Earl, which was soon after in full Parliament so justly branded; and if future Parliaments should not be able to discover any Difference between the Inconveniences arising from accumulative Evidence and accumulative Treason, may they not with great Justice censure, and condemn the one equally with the other? either the Bishop's Guilt or his Innocence.

But that which was then called accumulative Treason, was afterwards adjudged to be no Treason, and I hope your Lordships will yet adjudge this accumulative Evidence to be no Evidence: I am sure you will not punish a Man in the severest manner, until you have had some Reason given you, why you should punish him at all. You will not first believe a Man a Criminal without Proof, and then admit a criminal Confession to be forced upon every innocent Action, only to support such Belief. You will not adjudge a Man guilty of the highest Crime against the Law, when his Prosecutors themselves own, they cannot make good any one Branch of their Charge according to Law. And where ever I think I meet with it (it matters not where) I shall be sure to oppose it with all my Might. The Bishop's Case must be owned to be very hard, and the Evidence against him very weak, when his own Letter to his Son, and the Letter to *Dubois*, are put to the Torture to help out the Charge against him.

As for the Letter to *Dubois*, it is amazing to consider that such Pains should be taken from a Similitude of a broken Impression on Wax with a whole one, and a Similitude of two little E's, to fix it upon the Bishop; which, when fixed, can serve no Purpose at all against him; for that Letter hath neither Date, Subscription, Cypher, nor Cant Name in it; and for ought appears, may have been wrote before the Man was born whom they would mean by *Johnston*, therein named. Nothing reasonable is pretended to be guessed out of it, nor for ought appears, was it ever seen by any one besides the Writer; and yet because it is there said that the Writer wrote something (no one knows what, or when, or to whom) in the Hand of one Mr. *Johnston*, your Lordships are persuaded to infer, in Opposition to the positive Evidence of all the Bishop's Family, that *Kelly* was an Intimate of the Bishop's, and employed to write his Treasons.

The Use that is made of the Bishop's Letter taken from his Servant, is still more extraordinary. I have indeed too often observed doubtful Actions, by the Help of bold Innuendoes, construed criminally; but to give That in Evidence which was neither said nor done, to Innuendo Silence it self into High-Treason, is entirely new, and the learned Counsel deserve the Glory of the Discovery.

But the Bishop's Case will still appear the harder, when it is consider'd, that such Stress hath been laid upon such remote and distant Circumstances in favour of this Bill, and at the same time your Lordships were not pleased to receive on the Bishop's Behalf legal Evidence, real Evidence, and such as in natural Justice and Equity ought to have been admitted.

The Bill that hath lately passed both Houses against *Kelly*, doth not hinder him from being still a Witness, for it hath not yet had the Royal Assent, and perhaps never may; but if it had, there is, as I apprehend, nothing in that Bill, that will take away his Testimony in any Court in the Kingdom.

But be that as it will, I must beg Leave to insist that he is at present a good Witness, and as every Body is satisfied that it was in his Power to clear up this whole Affair, who knows what the Awe of an Oath might have extorted from him.

He appears to be a Man under the Influence of Conscience, for his refusing the Oaths to the Government, and thereby suffering his Subsistence to be taken from him, is a manifest Proof of it.

If therefore your Lordships had permitted *Kelly* to be produced when the Bishop called for him, something probably might have been discover'd, to have ascertained either the Bishop's Guilt or his Innocence.

But as his Case now stands, the Evidence of his Guilt appears very dark, and for ought I can observe, is like to continue so.

My Lords, I have now done; and if upon this Occasion, I have tired your Patience, or discovered a Warmth unbecoming me, your Lordships will impute it to the Concern I am under, lest, if this Bill should pass, it should become a dangerous Precedent for After-Ages. My Zeal, as an *Englishman*, for the Good of my Country, obliges me to set my Face against Oppression in every Shape; and where-ever I think I meet with it (it matters not whether one Man or five Hundred be the Oppressors) I shall be sure to oppose it with all my Might: For vain will be the Boast of the Excellency of our Constitution; in vain shall we talk of our Liberty and Property secured to us by Laws, if a Precedent

dent shall be establish'd to strip us of both, where both Law and Evidence are confessedly wanting.

My Lords, upon the whole Matter, I take this Bill to be derogatory to the Dignity of the Parliament in general, to the Dignity of this House in particular: I take the *Pains* and *Penalties* in it to be much greater, or much less than the Bishop deserves; I take every individual Branch of the Charge against him to be unsupported by any Evidence whatsoever. I think there are no Grounds for any private Opinion of the Bishop's Guilt, but what arise from private Prejudice only; I think private Prejudice has nothing to do with judicial Proceedings, I am therefore for throwing out this Bill.

F I N I S.



them shall be established to strip us of both, where both Law and Evidence are completely wanting.

My Lords, upon the whole Matter, I take this Bill to be derogatory to the Dignity of the Parliament in general, to the Dignity of this House in particular: I take the Power and Privilege in it to be much greater, or much less than the Bishop delivers; I take every individual Branch of the Charge against him to be unsupported by any Evidence whatsoever. I think there are no Grounds for any private Opinion of the Bishop's Guilt, but what arise from private Prejudice only; I think private Prejudice has nothing to do with judicial Proceedings, I am therefore for throwing out this Bill.

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